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# GREAT BRITAIN AND THE IRISH FREE STATE

by

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*with the aid of the Research Staff of the Foreign Policy Association*

THE recent demand of Eamon de Valera, President of the Irish Free State, for the creation of a "united Irish republic"<sup>1</sup> following the victory of his party—Fianna Fáil—in the Parliamentary elections of February 16, 1932, coincided with the end of the first decade of Free State existence.<sup>2</sup> While President Cosgrave, whose government had been in power during the preceding decade, had succeeded to a high degree in stabilizing Anglo-Irish relations on the basis created by the 1921 treaty with Great Britain, he had also done much to extend the powers of the Free State at the expense of Great Britain, especially in the field of international relations.<sup>3</sup> In spite of his achievements, he had been constantly attacked for his acceptance of the 1921 settlement, especially by de Valera and the Fianna Fáil party.

With de Valera's accession to power, three principal demands—for the first two of which the new President had fought in 1921—were brought to the fore. Immediately after his election, President de Valera announced that he intended to abolish the oath of allegiance, to secure the political unification of Ireland, and to retain the land annuities payments in the Free State Exchequer. Unification, the President declared, was essential for both political and economic reasons. The present "dismemberment," in his opinion, is economically disastrous, since the Free State is overwhelmingly agricultural while Northern Ireland is largely industrialized; union would wipe out tariff barriers and provide each section of the country with a large free market in the other.<sup>4</sup> Although de Valera announced that he would not attempt to bring about union by force, Northern Ireland, which has always opposed unification because it is largely Protestant, in religion and English in sympathies, ex-

pressed fear that the British government might use unification for bargaining purposes. On April 13, however, the British Cabinet assured the Premier of Northern Ireland that it would never barter the present status of Northern Ireland in return for an agreement with the Free State.<sup>5</sup>

In an unavailing effort to settle these various issues, conversations were held at Dublin and London between President de Valera and J. H. Thomas, British Secretary of State for Dominion Affairs, on June 8 and 10. Both before and after these conversations, Mr. Thomas announced that the British government might be unable to negotiate a new trade agreement with the Free State when its preferences under Great Britain's present tariff expire on November 15, 1932. While further conversations in the near future are not precluded, it appears highly probable that the two states will enter the Imperial Economic Conference, which convenes July 21 at Ottawa, without having conducted preliminary negotiations.

Confronted with the first serious clash over the Constitution of the British Commonwealth, Australia, New Zealand and South Africa have already taken a position interpreted as favorable to the British contentions. In notes dispatched to President de Valera in April, all three governments expressed the hope that no differences of opinion would arise which might weaken the unity of the British Commonwealth or disturb the friendly relations between "two of the oldest sister states." In reply to these representations, President de Valera reiterated the intention of carrying out his "mandate" with respect to the oath of allegiance and the land annuities, and predicted that once this had been done the consequent removal of "barriers to friendship created by Great Britain" would doubtless lead to the establishment of more friendly relations on a firmer basis.

1. "President" is a short form of the full title, "President of the Executive Council"—a position which corresponds closely to that of Prime Minister in Great Britain.

2. *New York Times*, June 18, 1932.

3. For a review of the period, cf. Stephen Gwynn, "The Shift in Irish Leadership," *Current History* (New York), April, 1932.

4. For a discussion of the Free State and the League, cf. p. 106.

5. For a brief discussion of the "Ulster" question, especially on its economic side, cf. Denis Gwynn, *The Irish Free State, 1922-1927* (London, Macmillan, 1928), chap. 1 and 2.

6. *The Times* (London), April 14, 1932. This position was reaffirmed in the House of Commons debate of June 17 on the Irish question. (*New York Times*, June 18, 1932.)

7. For the text of these notes, cf. *The Times* (London), April 4, 5, 9, 10, 1932. Dissent with the tenor of the notes was expressed in both Australia and South Africa. (*Ibid.*, March 29, 1932, and *New York Times*, April 10, 1932.)

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## IRELAND IN THE LAST TWO DECADES

To understand the issues raised by President de Valera, it is necessary to review Irish history since 1912—a year marked by the introduction into Parliament of the Liberal Home Rule Bill.<sup>9</sup> Although this act received the royal assent in 1914, it was suspended for the duration of the war and was not to come into effect until it had been amended so as further to protect the interests of Northern Ireland. As part of the compromise, the leaders of both Ulster and the Irish Nationalists agreed to cooperate with the British government in the war. Many South Irishmen, however, under the leadership of an organization known as Sinn Fein,<sup>10</sup> refused to accept anything short of independence. Stimulated by Sinn Fein, rebellion broke out on Easter Monday in 1916, and a Republic was proclaimed with Padraic Pearse as President.<sup>11</sup> While the uprising was soon crushed and martial law proclaimed, Sinn Fein contrived to maintain a precarious existence and carried on incessant irregular warfare.

In the 1918 Parliamentary elections, South Ireland was still entitled to 80 seats in the British House of Commons. The contest was between the Irish Nationalists, who had accepted the 1914 truce, and Sinn Fein; the Nationalists won only seven seats. The 73 Sinn Feiners,<sup>12</sup> refusing to take their seats at Westminster, constituted themselves the Dáil Eireann, or national assembly, of an independent government and met at Dublin.<sup>13</sup> In 1920 a new Government of Ireland Act was adopted at Westminster, which created autonomous governments of North and South Ireland.<sup>14</sup> While the Sinn Feiners were voluntarily absent from the Parliament which approved this measure, they participated in elections for a lower House to sit at Dublin.<sup>15</sup>

When the new Irish Commons assembled it was found that all but four of its 128 members were Sinn Feiners. They refused to take the oath of allegiance, although elected under an Act of Parliament of the United Kingdom, and regarded themselves as the legislative body of an Irish Republic. They elected de Valera President of the Dáil Eireann, and it was with him that the British Prime Minister, David Lloyd George, negotiated for a conference to be convened at London on

October 11, 1921.<sup>16</sup> The negotiations at this conference were stormy throughout, and several times seemed likely to fail, but on December 6<sup>17</sup> the five Sinn Fein delegates signed a treaty<sup>18</sup> by which Southern Ireland was given the constitutional status of a self-governing Dominion, and its Executive was made responsible to a representative Parliament. "The position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise" was defined as similar to that of the Dominion of Canada.<sup>19</sup> Until the Free State, pursuant to an arrangement with the British government, undertook its own coastal defense, the Imperial Navy was to defend all Ireland as well as Great Britain.<sup>20</sup> The Free State, meanwhile, might establish its own army.<sup>21</sup>

Article 17 authorized the existing House of Commons of South Ireland to take up consideration of the treaty, and provided for the establishment of a provisional government should the treaty be accepted.

When the treaty was submitted to the Dáil Eireann of the Irish Republic a bitter debate ensued. The five delegates who had signed the text of the treaty urged acceptance,<sup>22</sup> but de Valera expressed the opinion that the delegates had ignored their instructions, issued by himself, and had signed only under threat of "immediate war."<sup>23</sup> He argued, in addition, that

"... this treaty gives away Irish independence and acknowledges the head of the British Empire, not merely as the head of an association, but as the direct monarch of Ireland, as the source of the executive authority in Ireland."<sup>24</sup>

16. The British government refused, however, to recognize de Valera's position as President, addressing him always as Mr. de Valera. For the correspondence regarding this conference, cf. "Relations between Great Britain and Ireland," *International Conciliation*, November 1921, No. 168.

17. For a brief discussion of the negotiations, cf. Ogg, *English Government and Politics*, cited, p. 708-710.

18. Great Britain, *Articles of Agreement for a Treaty between Great Britain and Ireland* (London, H. M. Stationery Office, 1921), Cmd. 1560.

19. It was provided that the law, practice and constitutional usage governing the relationship of Canada to the Crown and to the Imperial Parliament should govern the similar relationship of the Free State. (*Ibid.*, Arts. 2-3.) Article 4 specified the form of the oath of allegiance. (Cf. p. 102.)

20. *Articles of Agreement for a Treaty*, cited, Art. 6. These provisions were to be reviewed in 1926 when the Free State was to consider undertaking a share of its own coastal defense. No such review took place, Ireland being content to secure naval defense without expenditure. The Irish government also agreed to make available to Great Britain certain harbor and other facilities—set forth in detail in an Annex—in time of peace, and "in time of war . . . such harbor and other facilities as the British Government may require for the purposes of . . . defense . . ." (*Ibid.*, Art. 7.)

21. *Ibid.*, Art. 8. In 1930-1931 Irish effectives were placed at 6,440. (W. T. Stone, "The Burden of Armaments," *Foreign Policy Reports*, Vol. VII, No. 20, December 9, 1931, Table II, p. 372.) For discussion cf. D. Gwynn, *The Irish Free State, 1922-1927*, cited, chap. 12.

22. The five Irish signatories to the treaty were Michael Collins, Arthur Griffith, Robert Barton, E. J. Duggan and George G. Duffy.

23. Irish Free State, Chamber of Deputies, *Official Report: Debate on the Treaty with England* (Dublin, The Talbot Press, 1922), p. 7-8, 9, 24.

24. *Ibid.*, p. 26.

9. F. A. Ogg, *English Government and Politics* (New York, Macmillan, 1929), p. 697-700.

10. Sinn Fein means "Ourselves alone."

11. Cf. Walter P. Hall, *Empire to Commonwealth* (New York, Holt, 1928), p. 269-283.

12. Thirty-seven were in jail.

13. Ogg, *English Government and Politics*, cited.

14. Great Britain, *Public General Acts, 1920*, chap. 67, Government of Ireland Act, 1920. For a brief discussion, cf. Ogg, *English Government and Politics*, cited, p. 706-708.

15. The Senate of Southern Ireland, which was never established, was to be composed of 20 official and nominated Senators, and 44 Senators chosen by special and highly restricted electorates. (Government of Ireland Act, 1920, cited, Schedule II.)



The basis of the second objection was the oath of allegiance found in Article 4 of the treaty:

"The oath to be taken by Members of the Parliament of the Irish Free State shall be in the following form:-

I . . . do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H. M. King George V., his heirs and successors by law, in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations."

By this oath, de Valera declared, ". . . you have an oath to the Irish Constitution and that Constitution will . . . have the King of Great Britain as the head of Ireland."<sup>25</sup>

Mr. de Valera apparently wished to substitute an oath in the following form:

"I . . . do swear to bear true and faithful allegiance to the Constitution of Ireland and to the Treaty of Association of Ireland with the British Commonwealth of Nations and to recognize the King of Great Britain as head of the Associated States."<sup>26</sup>

In this alternative oath can be seen his determination not to bind Ireland to Great Britain alone but, regarding it as an absolutely free state, to "associate" it with the Commonwealth by what would be in effect a treaty of alliance. His ideal, he said, was voluntary "external association."<sup>27</sup>

Those who favored the treaty agreed with many of de Valera's charges but they regarded the treaty as a good bargain on the whole, and believed that it should be accepted, since the only alternative appeared to be the renewal of hopeless civil war. When the treaty was finally brought to a vote, its adherents triumphed, 64 to 57.<sup>28</sup> When Arthur Griffith was proposed for President, de Valera and his followers walked out in protest since in their view the new government, based on the treaty, would "necessarily subvert the Republic."<sup>29</sup> Mr. Griffith was unanimously elected by the remaining 61 delegates. In the concluding session of the Dáil Griffith contended that the treaty vote represented ratification; de Valera argued that the Dáil should confine itself to approval of the treaty, and then call an election on this issue for a new assembly whose first act should be the consideration of ratification.<sup>30</sup> The treaty, as stipulated in its terms, received the ap-

25. *Ibid.*, p. 24.

26. *Ibid.*, p. 71. Following the opening debate there had been a series of secret sessions at which it was understood that de Valera had presented an alternative treaty in which was included this different form of oath of allegiance. While it had been agreed that the de Valera proposals should not be discussed publicly, one of the pro-treaty delegates read the alternative oath at the third public debate. Mr. de Valera protested against the reading, but did not deny the authenticity of the alternative oath or his authorship of it. (*Ibid.*, p. 72.)

27. *Ibid.*, p. 96, 308.

28. *Ibid.*, p. 344-346.

30. *Ibid.*, p. 410-411.

31. *Ibid.*, p. 417.

proval of the British House of Commons on March 31, 1932.<sup>32</sup>

Within a year from the signing of the Anglo-Irish treaty, the provisional House of Commons at Dublin had drafted a Constitution, which, after some negotiation, was acceptable to both the imperial government and the majority of the Irish representatives.<sup>33</sup> The Constituent Act of the Free State Parliament provided in its second section that the 1921 treaty should be an integral part of the Constitution. It further provided that the Constitution "should be construed with reference" to the treaty, and stipulated that any provision or amendment of the Constitution and any law made under its authority, if "repugnant to any of the provisions of the . . . Treaty, shall . . . be absolutely void and inoperative." The Free State government agreed for its part that it would "pass such further legislation and do all such other things as may be necessary" to implement the treaty.<sup>34</sup>

It had been reported that de Valera supported the first draft of the Constitution taken to London early in June 1922, although he had not formally participated in its preparation, and that he had entered into a pact with General Collins providing for a Coalition government after the election of a constituent assembly on June 16, 1922.<sup>35</sup> When the British government, however, rejected the draft on which this pact was said to have been based<sup>36</sup> and announced that the Irish representatives had agreed "to alter the draft Constitution in any and every particular in which it was shown to be at variance with the Treaty,"<sup>37</sup> de Valera returned to the opposition.

While the treaty and Constitution were accepted by a majority of the Irish Nationalists as the best bargain they could obtain,<sup>38</sup> de Valera and his followers persisted in their dissent. Mr. de Valera was again

32. On the next day a British Order in Council, as contemplated in Article 17 of the treaty, set forth in detail the powers and functions of the provisional government which had already been partially established. (Great Britain, *Statutory Rules and Orders*, 1922, No. 315.)

33. This Constitution was given final legal force through an Irish Free State Constitution Act of 1922, passed by the British Parliament in accord with constitutional usage, to which the Constitution was attached as the first schedule and the treaty as the second schedule. (Great Britain, *Public General Acts*, 1922-1923, chap. 1.)

34. *Ibid.*

35. *The Times* (London), June 3, 7, 1922.

36. Among the points to which the British government objected were the oath of allegiance and the failure to make provision for carrying appeals beyond the Irish High Court. The latter objection was met by the creation of a Supreme Court which was to hand down final decisions not subject to review "by any other Court, Tribunal or Authority whatsoever," with reservation to the individual of the right to petition the King in Council (Article 66 of the Constitution). (Cf. D. Gwynn, *The Irish Free State, 1922-1927*, cited, chap. 6.) This right was virtually nullified later by an Act of the Free State Parliament. (*Ibid.*) During the debate on the Statute of Westminster in November 1931, the question of appeal to the Privy Council was declared by the British Solicitor-General to be still unsettled. (259, *House of Commons Debates*, 5th series, London, H. M. Stationery Office, 1931, cols. 1251-1252.)

37. *The Times* (London), June 8, 1922.

38. In the June 16, 1922 election, 58 of the successful candidates were "pro-treaty," and 36 "anti-treaty." (*Ibid.*, June 26, 1922.)



elected "President" by the dissenting minority, and civil war went on for more than a year.<sup>39</sup> The 36 anti-treaty deputies, furthermore, refused to sit in the Dáil because of their unwillingness to take the oath of allegiance, and the actual government was thus left in the hands of the new régime.

By 1923 the republican revolt had been subdued. De Valera's followers participated in the Dáil elections of that year and of June 1927, but declined to take their seats. Finally, in June 1927, an Electoral Reform Bill was enacted requiring that thereafter candidates must affirm their intention to take their seats, if elected, before their names could be allowed to appear on the ballot papers.<sup>40</sup> Although this provision obviously meant that the oath must be taken, it had the immediate effect of bringing de Valera and his 43 followers into the Dáil.<sup>41</sup> In September 1927 a new election was held and de Valera's party—Fianna Fáil—won 57 seats, while President Cosgrave's party secured 61.<sup>42</sup> After de Valera's entry into the Chamber,

### THE OATH OF ALLEGIANCE AND LAND ANNUITIES ISSUES

Shortly after taking office in 1932, President de Valera introduced in the Dáil<sup>43</sup> a bill which proposed not only to abolish the oath of allegiance but to remove from the Free State's Constituent Act the requirement that the Constitution accord with the 1921 treaty.<sup>44</sup> Declaring that he had a mandate from the electorate for abolition of the oath,<sup>45</sup> the President contended that the oath "had been the cause of all the strife and dissension in the country since the signing of the Treaty . . . The people regard it as an intolerable burden, a relic of mediaevalism, a test imposed from outside under threat of immediate and terrible war . . . Real peace is impossible so long as the full and free representation of the people in their Parliament

Labour, which had formerly been the only opposition party, combined with Fianna Fáil, while President Cosgrave was joined by the Farmers' party (6) and the Independents (13). Since the total membership of the Dáil is 153, the Cosgrave government thus held a slight but sufficient majority and Cosgrave was again elected President of the Executive Council.

In the 1932 campaign Fianna Fáil presented a program demanding work for all, abolition of the oath of allegiance and retention of the land annuities payments. So far as can be judged, de Valera's party was victorious chiefly because of the economic depression, the consequent burden of taxation, and a desire for a change after ten years of Cosgrave rule. Though Fianna Fáil won slightly less than half the seats in the Chamber of Deputies it was able to command a majority with the aid of its Labour allies.<sup>46</sup> Labour indicated that it would support the President on the oath issue, although apparently only after a pledge on his part that unemployment legislation would be enacted.<sup>47</sup>

is rendered impossible by a test of this character."<sup>48</sup>

According to President de Valera, the removal of the oath of allegiance does not mean the withdrawal of the Free State from the British Commonwealth, although he has indicated his willingness to take the latter step if given a mandate by the electorate.<sup>49</sup> Furthermore, the amended Free State Constitution would still recognize the position of the King and his representative, the Governor-General, and would, in its first article, continue to define the Free State as a "co-equal" member of the Commonwealth. The President contends that if co-equality has any meaning, it gives his government the right to take the action which he proposes, especially since, in his opinion, the oath of allegiance is a matter of purely domestic concern.<sup>50</sup>

In order to abolish the oath of allegiance, President de Valera proposes to amend the Free State Constitution. In reply to the argument that no amendments may infringe upon the provisions of the 1921 treaty, the President argues first, that the 1921 treaty does not make the oath mandatory—it simply states that "the oath to be taken . . . shall be in the following form." Second,

39. Ogg, *English Government and Politics*, cited, p. 715.

40. D. Gwynn, *The Irish Free State, 1922-1927*, cited, p. 53, 138.

41. In taking the oath, de Valera declared that it was a formality which for him had no significance. (S. Gwynn, "The Shift in Irish Leadership," cited, p. 10.)

42. *Ibid.* The Cosgrave party is known as Cumann Na nGaedheal.

43. In the present Dáil, Fianna Fáil numbers 72 and Labour 7—a total of 79, while Cosgrave's party holds 56 seats, the Farmers' party 4, and the Independents, most of whom support Cosgrave, 13—a total of 73. (*The Times*, London, March 5, 1932.)

44. *Ibid.*, April 27, 1932. On May 1 the number of unemployed was reported to have reached 85,000 (*ibid.*, May 2, 1932), as compared with 21,427 on July 1, 1931. (Eoin MacNeill, "Ten Years of the Irish Free State," *Foreign Affairs*, New York, Vol. 10, No. 2, January 1932, p. 242.)

45. April 20, 1932.

46. *The Times* (London), April 23, 1932. The text of the bill was also printed in the *New York Times* of the same date.

47. Great Britain, Dominions Secretary, *Papers Relating to the Parliamentary Oath of Allegiance in the Irish Free State and the Land Annuities* (Great Britain, H. M. Stationery Office, 1932), Cmd. 4056, p. 4. (Hereinafter cited as *Papers Relating to the Oath and Annuities*.) Both the British and the Cosgrave party point out that only de Valera's followers can be said to have given him such a mandate and that in the present Dáil their representatives number only 72 out of a total of 153. Furthermore, although Labour is supporting President de Valera's bill, it campaigned on a platform which made no reference to the abolition of the oath of allegiance.

48. *Ibid.*, p. 2. President de Valera declares that republican elements, such as the Irish Republican Army, will only be reconciled to parliamentary government when the oath of allegiance is removed. (*The Times*, London, April 21, 1932.) The President's first act after his election was to suspend the Public Safety Act adopted by the Cosgrave government in October 1931, which outlawed certain groups and set up military tribunals to deal with threats of political terrorism; the I. R. A. was one of the bodies banned by this Act. (*Ibid.*, March 19, 1932.)

49. *The Times* (London), April 27, 1932.

50. *Papers Relating to the Oath and Annuities*, cited, p. 2.



even if the treaty does make the oath mandatory the Free State government is entitled to amend the Constitution despite the provisions of the treaty. He declares that the competence of the Free State government to take such action "has been expressly recognized by the British legislature itself."<sup>51</sup> This statement refers, apparently, to the Statute of Westminster, passed by the British Parliament in December 1931, Clause 2 of which is as follows:<sup>52</sup>

"(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion."<sup>53</sup>

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void and inoperative on the ground that it is repugnant to the law of England, or to any provision of any existent or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion."

The Free State government argues that this statute, giving a Dominion authority to legislate to the extent of setting aside any Act of the British Parliament, includes the right of the Free State to amend its Constitution so as to abolish restrictions imposed by the 1921 treaty. In support of this position it cites the statement of Winston Churchill in the course of the debates on the Statute of Westminster in the British House of Commons. Mr. Churchill declared that he had been advised on high legal authority that if the Statute were passed without amendment,

"It would be open to the Dáil at any time to repudiate legally . . . with the full sanction of law and Parliamentary procedure every provision of the Articles of Agreement . . . to repudiate the oath of allegiance [and] to abolish the right of appeal to the Privy Council."<sup>54</sup>

Consequently, he supported an amendment by which a clause would have been added to the Statute, setting forth that

"Nothing in this Act shall be deemed to authorize the Legislature of the Irish Free State to repeal, amend or alter the Irish Free State Agreement Act, 1922, or the Irish Free State Constitution Act, 1922, or so much of the Government of Ireland Act, 1920, as continues to be in force in Northern Ireland."<sup>55</sup>

Mr. Thomas replied by reading a letter from President Cosgrave to Prime Minister MacDonald, in which the former said:

51. *Ibid.*, p. 5.

52. Great Britain, *Public General Acts, 1931-1932*, chap. 1. Text also printed in *Current History* (New York), January 1932.

53. The Colonial Laws Validity Act required conformity of Dominion legislation with British Parliamentary acts affecting the Dominions.

54. 259 *House of Commons Debates*, 5th series, cols. 1193-1195, November 20, 1931. Mr. Churchill's argument was presented by the Labour Opposition in the June 17 House of Commons debate on the Irish question, and was not denied by the Government. (*New York Times*, June 18, 1932.)

55. 260 *Commons Debates*, col. 303, November 23, 1931.

" . . . the maintenance of the happy relations which now exist between our two countries is absolutely dependent upon the continued acceptance by each of us of the good faith of the other. This situation has been constantly present to our minds and we have reiterated time and time again that the Treaty is an agreement which can only be altered by common consent."<sup>56</sup>

Speaking in support of the government's opposition to this amendment, Mr. L. M. S. Amery argued that the Free State would still be bound by the "original Treaty"<sup>57</sup>—an attitude also taken by Stanley Baldwin, a member of the Cabinet, and, outside of Parliament, by Professor A. Berriedale Keith.<sup>58</sup>

Despite Mr. Churchill's arguments, the British Cabinet held that the proposed amendment safeguarding the 1921 treaty was unnecessary. It apparently feared, also, that the adoption of such an amendment would offend Irish sensibilities and strengthen de Valera's position in the forthcoming February 1932 elections. The amendment safeguarding the treaty was defeated by a vote of 350 to 50.<sup>59</sup>

The underlying issue, therefore, is whether the Free State government may exercise the powers granted in the Statute of Westminster to the extent of setting aside the 1921 treaty without the consent of the British government. President de Valera answers this question in the affirmative, stating that the Commonwealth must rest upon the voluntary consent of its members, while the British government stands upon the principle of the "sanctity of treaties."<sup>60</sup> It may be argued that while the Statute of Westminster vested complete legal power in the Free State government to change its Constitution, it assumed that this power would not be exercised to violate an inter-imperial obligation previously accepted by both the Free State and British governments. In this respect the situation seems analogous to that in the United States where Congress has the constitutional power to abrogate a treaty, although such abrogation may constitute a violation of the international obligations of the United States.

On April 20 de Valera introduced in the Dáil his bill to abolish the oath and to strike from the Constitution the provision that amendments, and even laws, must be in accord with the terms of the 1921 treaty.<sup>61</sup> The Dáil passed this bill on May 19. On June 8, however, the Senate, which because of the twelve-year term of its members is still con-

56. *Ibid.*, col. 311, November 23, 1931.

57. 259 *Commons Debates*, col. 1203-1204.

58. *Manchester Guardian Weekly*, May 6, 1932.

59. 260 *Commons Debates*, cols. 346-347.

60. *Papers Relating to the Oath and Annuities*, cited, p. 3, 8; *The Times* (London), April 27, May 25, 1932.

61. *The Times* (London), April 23, 1932. The text of the bill was printed in the *New York Times* of the same date.



trolled by the Cosgrave party,<sup>62</sup> rejected that section of the bill striking out reference to the treaty from the Constitution, and adopted an amendment to the effect that the bill should not come into force until the Free State and British governments had reached an agreement concerning the abolition of the oath.<sup>63</sup> Under the Free State Constitution a bill rejected by the Senate may become law at the end of eighteen months after its introduction provided it is passed by the Dáil for the second time.<sup>64</sup>

The final issue raised by President de Valera concerns the land annuities—payments owed by Irish tenant-purchasers on account of loans advanced to them by authority of various Acts of the British Parliament from 1891 to 1909 to enable them to buy their holdings. The funds advanced for this purpose came largely from British, but to some extent from Irish, investors who subscribed to bonds guaranteed in all cases as to interest and in some as to principal by the British Exchequer.

In his campaign platform, de Valera included an assertion that the Free State had a right to retain these annuities. On June 15, when an installment became due, no payment was made to the British government, and de Valera declared that none would be made unless Great Britain were able to prove its case for payment in the courts.<sup>65</sup> The Free State government also indicated that since there was no legal obligation to make these payments to London, it was entitled to demand the return of the £30,000,000 which had been remitted in the past decade.<sup>66</sup>

The President's argument for the retention of these funds appears to be based on the fact that the governments of both Northern and Southern Ireland received the right to retain the annuities by the Government of Ireland Act of 1920 and that the payments

are no longer made by the Northern Ireland government.<sup>67</sup> President de Valera stated in a communication to the British government that he was not aware of "a formal and explicit undertaking to pay the Land Annuities to the National Debt Commissioners." Nevertheless, he asserted, "any just and lawful claims of Great Britain . . . will be scrupulously honoured."<sup>68</sup>

The British government answered that the present status of the Free State, unlike that of Northern Ireland, no longer rested on the Government of Ireland Act of 1920, but upon a separate Act and a series of subsequent agreements, among which is the land annuities settlement. It published for the first time the text of an agreement dated February 23, 1923 and signed by President Cosgrave, by which the Free State government undertook to collect the annuities and "to pay to the appropriate fund the full amount," pledging the Central Fund of the state as secondary security.<sup>69</sup> Subsequently, the British contend, this agreement was implemented by the Free State Land Act of 1923,<sup>70</sup> while in 1926, in a second instrument signed by both governments, the Free State agreed "to pay to the British Government . . . the full amount of the annuities . . . without any deduction whatsoever on account of Income Tax or otherwise."<sup>71</sup> President de Valera maintains, however, that the 1923 agreements did not specify payment to the British government and that the 1926 undertaking which corrected this omission was never approved by the Dáil and therefore cannot be recognized as valid.

Meanwhile, although President de Valera proposed to collect the annuities and employ them for public purposes in the Free State, it is reported that many tenant-purchasers have interpreted the situation as one ending their obligation to make further payments.<sup>72</sup>

## THE QUESTION OF SETTLEMENT—ARBITRATION OR NEGOTIATION

While President de Valera insists that the oath bill is a purely domestic matter, he has agreed to submit the annuities issue to international arbitration. He has refused, however, to accept a Commonwealth tribunal,

fearing that "the dice would . . . be loaded against Ireland."<sup>73</sup> The British government indignantly rejected de Valera's proposal.<sup>74</sup>

62. In the present Senate there are 24 Cosgrave members, 3 Farmers' and 16 Independents—a total of 43, against 11 followers of de Valera and 6 Labourites. The last Senate election was held on December 4, 1931. (*The Times*, London, December 5, 1931.)

63. *New York Times*, June 9, 1932. This action was confirmed on third reading on June 15.

64. Cf. Art. 38A of the Free State Constitution. (*Irish Free State, Constitution (Amendment No. 13) Act, 1928*, Dublin, Stationery Office, 1928.) This period might be shortened considerably by the dissolution of the Dáil.

65. *New York Times*, June 15, 1932.

66. *The Times* (London), May 30, 1932. In December 1931 the Cosgrave government published a lengthy brief defending the legality of its transfer of these payments to the National Debt Commissioners in London. (*Irish Free State, Executive Council, Land Purchase Annuities*, Dublin, Stationery Office, 1931.) De Valera is reported to have had an opposition brief prepared by eminent lawyers, but apparently it has not been published.

67. *Government of Ireland Act, 1920*, cited, section 26. Northern Ireland for its part, however, has borne a share of the British Public Debt, an obligation from which the Free State was relieved in 1925 as part of a compromise respecting the boundaries of the two states. (Great Britain, *Public General Acts, 1925*, chap. 77.)

68. *Papers Relating to the Oath and Annuities*, cited, p. 5.

69. Great Britain, Dominions Secretary, *Financial Agreements between the British Government and the Government of the Irish Free State, February 23, 1923* (London, H. M. Stationery Office, 1932), Cmd. 4061.

70. *Irish Free State, Land Act of 1923*, sec. 12. (Dublin, Stationery Office, 1923.)

71. Great Britain, Dominions Secretary, *Heads of the Ultimate Financial Settlement between the British Government and the Government of the Irish Free State* (London, H. M. Stationery Office, 1926), Cmd. 2757.

72. *The Times* (London), April 4, 1932. Cf. also Hugh A. Law, "General Election in the Irish Free State," *Contemporary Review* (London), Vol. 141, No. 796, April 1932, p. 443-444.

73. *New York Times*, June 18, 1932. The refusal of de Valera to accept a Commonwealth tribunal was confirmed by his Cabinet on June 24. (*Ibid.*, June 25, 1932.)

74. *Ibid.*, June 18, 23, 1932.



Despite the membership of the Dominions in the League, the British government has declared that the Covenant is not intended "to govern the relations *inter se* of the British Commonwealth."<sup>75</sup> The Free State government, however, has taken the opposite point of view. Thus in 1924 it registered the 1921 treaty with the League Secretariat,<sup>76</sup> contending that Article 18 of the Covenant made such registration obligatory.<sup>77</sup> Although the British government protested such registration on the ground that the treaty applied purely to inter-imperial relationships, the treaty remains in the League Treaty Series.

Furthermore, on September 14, 1929 the Free State accepted the Optional Clause of the Statute of the Permanent Court of International Justice, providing for compulsory arbitration of legal disputes, "on the sole condition of reciprocity."<sup>78</sup> Four days later, however, Great Britain and the other Dominions, as well as India, accepted the same clause subject to a number of reservations, one of which excluded from the Permanent Court

"... disputes with the Government of any other Member of the League which is a Member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree . . ."<sup>79</sup>

The 1930 Imperial Conference formulated plans for the voluntary adjudication of inter-imperial disputes by "an *ad hoc* body selected from standing panels submitted by the several members of the Commonwealth."<sup>80</sup>

A second possibility of settlement lies in negotiation, the course of which has been discussed.<sup>81</sup> The commercial importance of Great Britain to Ireland, it is thought, may affect the course of negotiations at the Ottawa Conference and thereafter.

In recent years the Free State has sold more than 90 per cent of its produce to Great Britain, and since the coming into effect of the general tariff in the latter country on March 1, it has done so on better terms than its chief competitor, Denmark. At the same time the Free State is one of Great Britain's best customers for manufactured goods and the value of its purchases in the British market is greater than that of its sales. While the Free State's exports to Great Britain represent an overwhelming percentage of its total trade, however, the Free State takes only approximately 8 per cent of British exports. It is therefore generally believed that

the Free State would find itself in a more serious predicament than Great Britain should existing trade relationships between the two countries be altered—a point which the Cosgrave opposition has vigorously emphasized. Meanwhile, President de Valera stressed the importance of the development of Free State industry in his electoral campaign, and since March 9 his government has imposed an extensive number of tariffs for the purpose of encouraging domestic manufacture.

#### CONCLUSION

On June 16 President de Valera sent a note to the British government in which he reiterated that his ultimate aim was the establishment of a "united Irish republic."<sup>82</sup> Such a government, he declared, would associate with Great Britain "in some circumstances and for some reasons," and would recognize the British King as the head of the associated states—a position almost identical with that which he took in 1921.<sup>83</sup> Mr. Thomas seems to have expressed the will of an overwhelming majority of the House of Commons in replying that "no British government would ever agree to such a suggestion." The British objection to an independent Ireland merely "associated" with the government of Great Britain rests on three principal grounds. First is the hostility of Northern Ireland to union with the Free State, which, it is feared, might cause an Irish civil war to which the British government could not remain indifferent.<sup>84</sup> Second, a free Ireland might ally with some state other than Great Britain, thus providing a hostile power with a base of operations against the United Kingdom.<sup>85</sup> Third, a free Ireland might mark the beginning of the dissolution of the British Commonwealth.

Finally, sentiment and temperamental factors play a part in the present impasse. President de Valera has asserted repeatedly that Irish history is a long record of bad faith and perfidy on the side of the British.<sup>86</sup> He has not excepted from this charge the settlement of 1921. For its part the British government believes that the 1921 settlement was marked by generosity and, in turn, charges de Valera with "repudiation"—a term which not only angers the Free State President but strengthens his appeals to Irish nationalism. In addition, the feeling of many Englishmen, recently emphasized by David Lloyd George, that President de Valera is a stubborn and unreasoning antagonist with whom it is impossible to arrive at any agreement,<sup>87</sup> cannot be expected to increase the chances of early settlement.

75. League of Nations, *Treaty Series*, Vol. XXVII (1924), p. 449.

76. *Idem*, Vol. XXVI (1924), p. 9-20.

77. *Idem*, Vol. XXVII, p. 450. Article 18 of the League Covenant sets forth that no treaty or international engagement shall be binding until registered with the League Secretariat.

78. Permanent Court of International Justice, *Sixth Annual Report*, p. 478.

79. *Ibid.*, p. 479-484.

80. Imperial Conference, 1930, *Summary of Proceedings* (London: H. M. Stationery Office, 1930), Cmd. 3717, p. 22-24.

81. *Cf.* p. 100.

82. *New York Times*, June 18, 1932.

83. *Cf.* p. 101-102.

84. *Cf.* p. 100.

85. This position was taken by David Lloyd George, who was the British Prime Minister at the time of the negotiation and signing of the 1921 treaty. *New York Times*, June 18, 1932.

86. *Papers Relating to the Oath and Annuities*, cited.

87. *New York Times*, June 18, 1932.